Supreme Court, U.S.
FILED
JUL 24 2000
CLERK

(2)

No. 99-2058

In the

Supreme Court of the United States

JESSE LAGUNA, BARBARA VICKROY, RENEE SILVA, on behalf of themselves and all others similarly situated,

Petitioners,

v.

CALIFORNIA BOARD OF EDUCATION, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION ONE

BRIEF IN OPPOSITION OF ESCONDIDO UNION HIGH SCHOOL DISTRICT, PAUMA SCHOOL DISTRICT, AND VALLEY CENTER UNION SCHOOL DISTRICT

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QUESTIONS PRESENTED

Real Parties In Interest object to the questions presented in Petitioner's petition for writ of certiorari because they do not accurately reflect the issues raised by this action. Real Parties In Interest Escondido Union High School District, Pauma School District and Valley Center Union School District present the question for review as follows:

Did the California Court of Appeal err when it determined that, given the state's plenary power to oversee and regulate the formation of its political subdivisions, and the lengthy administrative process that preceded the voters' ratification of the proposal, the creation of a new school district did not sufficiently implicate the right to vote to require strict scrutiny?

Did the California Court of Appeal err when it determined that petitioners had not been taxed without representation and had not been denied the right to petition the government for redress?

PARTIES TO THE PROCEEDING

The Petitioners in this case are Jesse Laguna, Barbara Vickroy and Renee Silva, residents of the city of Escondido. Respondent State Department of Education is the California Department of Education, which approved the formation of the new school district. Real Parties in Interest, Escondido Union High School District, Pauma School District and Valley Center Union School District are California public school districts that proposed the unification and formation of the new school district.

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REAL PARTIES IN INTEREST'S BRIEF IN OPPOSITION

Real Parties in Interest, Escondido Union High School District ("Escondido U.H.S.D."), Pauma School District ("Pauma") and Valley Center Union School District ("Valley Center") respectfully submit this brief in opposition to Petitioners' Petition for Writ of Certiorari to review the decision of the California Fourth District Court of Appeal, Division 1, entered on October 29, 1999. These responding parties shall collectively be referred to as "Real Parties" throughout this brief.

STATUTORY PROVISIONS INVOLVED

Real Parties disagree that the First Amendment to the United States Constitution is implicated in this case. Rather, only the California statutes relating to school district reorganization are at issue.

REAL PARTIES' STATEMENT OF THE CASE

Petitioners mischaracterize the issue in this case. This is not a case where earmarked bond funds were funneled to a project in another district, without voter approval. Rather, the funds were obtained with voter approval, were spent on the construction of a school, and then the duly elected governing board members of all the districts agreed on an equitable division of assets and liabilities, including the bonded indebtedness. This division of assets and liabilities was approved by the State Board, as required by state law. The

financial effect of this division of assets and liabilities on the citizens of Escondido was minimal, and the courts found that the right to vote was not implicated.

Pauma and Valley Center are located in a region within Escondido U.H.S.D. which is geographically remote from the City of Escondido as well as from the high schools built before 1997. Until September 1998, the students of Valley Center and Pauma had been bused to Orange Glen, San Pasqual and Escondido high schools within Escondido U.H.S.D. over great distances that amounted to four to five hours round trip bus travel time per day for many students.

In 1995, discussion of school district reorganization gathered momentum within the region, culminating with a major study of unification commissioned by the San Diego County Office of Education ("County Office") on behalf of the San Diego County Committee on School District Organization ("County Committee").

In June 1996, a local bond measure passed, and Escondido U.H.S.D. applied for matching funds for a new high school through the State School Construction Program, to be paid from proceeds of a state-wide school construction bond . By the time the unification proposal reached the State Board in December 1996, however, Escondido U.H.S.D. had learned that its priority for matching state funds would not be transferrable to a new unified district, and the parties to the unification had not yet addressed the issue of dividing the new bonded indebtedness, so the unification proposal before the State Board was temporarily tabled.

In early 1997, construction began on a new high school in Valley Center. The parties then reopened discussions on unification to resolve the question of how to divide assets of Escondido U.H.S.D., as well as the indebtedness for the $42.695 million local bond measure, $16 million of which was being used to construct the new high school.

After thorough study and discussion, public notice, and a number of public hearings in the Spring of 1998, Escondido U.H.S.D., Valley Center, and Pauma agreed upon a division of bonded indebtedness which would leave the tax rate the same for all taxpayers in Escondido U.H.S.D. and the new unified district. In sum, the division required the new district to pay Escondido U.H.S.D. $1million immediately, and further provided that the new district would not be entitled to its proportionate share of assets of Escondido U.H.S.D. The County Superintendent notified the State Board, which then reviewed the entire unification proposal as well as the recommendation of its staff, in favor of the proposal. The State Board, concurring with the three affected districts that the division would promote equity, approved the unification in July 1998, and directed the County Superintendent to call an election. A special election was held on March 2, 1999, at which the voters of Valley Center and Pauma approved the unification by a stunning 85.5% margin.

In August 1998 Petitioners filed a petition for writ of mandate, alleging deprivation of fundamental voting rights, violation of equal protection of laws, violation of due process, and abuse of discretion flowing from the decision of the State Board of Education approving the method of dividing bonded indebtedness chosen by Valley Center, Pauma, and Escondido

U.H.S.D. as being the most equitable outcome for all three districts pursuant to state law and ordering the election held within the territory of the proposed new unified district. The petition prayed for the issuance of a writ directing the State Board to set aside the portion of its resolution of July 9, 1998, concerning bonded indebtedness, directing that the election be held in the entire Escondido U.H.S.D. territory, and requiring Pauma and Valley Center "to accept their proportionate share of the bonded indebtedness."

The trial court denied the petition, making a factual finding that fundamental rights were not sufficiently implicated to require a strict scrutiny analysis. Petitioners appealed the trial court's decision. The State of California Court of Appeal, Fourth District, Division One, affirmed the trial court's decision.

Petitioners' attempts to characterize this lawful election as affecting their fundamental rights have repeatedly failed. Petitioners were not denied the right to vote. They were able to vote for the bond, and they were able to vote for the school board members who agreed to the division of bonded indebtedness, and the division of assets and liabilities.

Petitioners were not denied the right to petition their government. They had the ability to attend, and actually did attend, school board meetings and State Board meetings where the issue of the unification was discussed and approved. The record reflects that they addressed the respective boards a expressed their opinions about the unification.

Finally, Petitioners were not taxed without representation. They were part of the electorate that passed the subject bond measure.

Thus, none of Petitioners' fundamental rights have been denied or abridged in any way. Petitioners are simply upset with the deal struck by their duly elected school board, which traded away the new high school for consideration it deemed fair. The State Board then approved the plan, and restricted the voting to those directly affected by the unification: those living in the unified district. The State Board found, and the trial court and appellate court agreed, that those living outside the bounds of the new school district were not sufficiently affected, financially or otherwise, to include them in the unification election.

ARGUMENT

I. THIS CASE PRESENTS NO BASIS FOR SUPREME COURT REVIEW

The United States Supreme Court accepts for review only cases involving important federal questions with broad public policy implications. This case does not meet that test.

Rule 10 of the Rules of the Supreme Court of the United States sets forth specific reasons for which the Court will grant certiorari. None of the Rule 10 reasons applies here.

The petition in this case challenges a state court decision, not a decision of the United States Court of Appeals. The California Supreme Court, the state court of last resort, refused

to consider this case. The state court of appeal made no decision on an important federal question that conflicts with decisions of other state courts of last resort or a United States court of appeals.

Finally, the state court did not decide an important question of federal law that has not been, but should be, settled by this Court. The trial court and the state court of appeal both found that the facts did not give rise to the federal issues raised by petitioners. Both courts found that the right to vote was not sufficiently implicated, and that all parties were afforded due process.

II. PETITIONERS' ARGUMENTS HAVE NO VALIDITY

Petitioners' attempts to manufacture a federal issue in this matter have repeatedly failed, as there is no factual basis to support a federal issue. Petitioners' reliance on *Shapiro v. Thompson*, 394 U.S. 618 (1969), is misplaced. *Shapiro* involved the denial of public assistance on the basis of length of residence in the jurisdiction, thus impermissibly infringing on the right to move within the United States. No such fundamental right is implicated in this case.

The state courts correctly held that the right to vote was not sufficiently implicated in this case, and also made the appropriate factual findings that Petitioners were not taxed without representation nor denied the right to petition the government for redress.

A. THE RIGHT TO VOTE WAS NOT SUFFICIENTLY IMPLICATED

The state courts correctly held that the right to vote was not sufficiently implicated in this case. Petitioners were eligible to vote for the subject bond, and also were able to vote for or against the school board members who negotiated and agreed to the division of assets and liabilities. Petitioners complain, however, that they were not included in the electorate who gave final approval to the unification.

The court based its decision on the state's plenary power over education and the formation of school districts. The state's plenary power to oversee and regulate the formation of school districts entitles the state to identify as differing in degree the interests of those who may vote and those who may not vote on the formation of a new school district. The state in this case correctly determined that only voters residing in the territory to be formed into a new school district should vote on the matter. This is consistent with the applicable statute, which provides that, unless the State Board holds otherwise, "the election shall be held only in the territory proposed for reorganization." (Cal. Ed. Code, § 35732.)

The legislative scheme for creating new school districts is lengthy and complicated, involving public hearings at several levels, and approval by the affected school boards and the State Board. Only after that lengthy process is the matter submitted to voters for ratification.

Given this multi-layered process, with procedural safeguards of numerous public hearings, required information

and approval by two governmental bodies, the voters' role is merely the final step of many. This complex process is designed to protect the political and economic rights of the various constituencies. Therefore, the right to vote for those residing outside the new school district is not sufficiently implicated to require strict scrutiny.

While petitioners allege a financial interest in the unification, they do not tell the full story. The unification included the division of the bonded indebtedness, but it also included a division of assets, a payment by the new school district to Escondido U.H.S.D., and other benefits to Escondido U.H.S.D. in that it would no longer be responsible to run the new school which, due to its remote location, was the most expensive school in the district to operate. Thus, the state court held that any financial interests of the voters in Escondido U.H.S.D. were addressed by the petition, or were not substantial enough to warrant a vote on the approval of the unification.

Petitioners' reliance on *City of Phoenix v. Kolodzieski*, 399 U.S. 204 (1970), is unwarranted. *City of Phoenix* invalidated the practice of limiting the vote on general obligation bonds to property owners. The court held that all voters had a substantial interest in the election, as non-property owners would pay for the bonds indirectly through property taxes passed on through rents, and by other means. In the instant case, petitioners cannot show such an interest. The courts already made the factual findings that the financial effect on petitioners is minimal. Petitioners already voted for the bond. The division of assets and liabilities does not impose any additional obligation on them as citizens.

B. PETITIONERS WERE NOT TAXED WITHOUT REPRESENTATION

Petitioners have not even made a *prima facie* showing that they were taxed without representation. They do not deny that they voted on the bond. There confused argument appears to be that since high school that was built with some of the bond money is now under the control of another school district, they have been taxed unfairly. Again, they ignore the fact that they voted for the bond, and that they voted for the school district representatives who negotiated the exchange of assets and liabilities. Petitioners were informed and represented throughout the process.

C. PETITIONERS HAVE NOT BEEN DENIED THE RIGHT TO PETITION THE GOVERNMENT

Petitioners have been allowed, and have exercised with enthusiasm, their right to petition the government. They repeatedly raised their objections to the unification at school board meetings, and also at the State Board meeting. The fact that they will not be voting for school board members in the new school district does not mean that they cannot continue to voice their opinions to their own school board, or to the new school board.

The fact that the bonded indebtedness will be paid over a 25 year period does not change the analysis. Petitioners' argument breaks down immediately upon scrutiny. Petitioners' argument hinges on the fact that they will continue to pay for the high school in the future. If the indebtedness had already